

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CRIMINAL NO. 1:09CR17

UNITED STATES OF AMERICA

VS.

ALBERT CHARLES BURGESS

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ORDER

THIS MATTER is before the Court on the response filed by Defendant's substitute appointed counsel, Clinton L. Rudisill, to the Court's Order directing him to file a report "informing the Court on the status of his or her representation of Defendant." **See Order, filed July 10, 2009, at 4.**

After a review of Mr. Rudisill's response, counsel is advised that this Court has no authority or desire to dictate to any panel attorney what his or her strategy should be in the handling of a particular case, the amount of time to be spent in the preparation of the case, the decision to use investigators or other experts, or any other matter normally reserved to the proper decision making process of representing a client.

The Court notes that counsel is no stranger to the practice before a federal court and is or should be aware of his obligation to his client, his profession and to the courts before which he practices. Counsel is also aware or should be aware of the maximum hourly fee rate allowed by law, subject to reasonable increase if found by the Court to be appropriate.

From the content of counsel's response, it appears he is aware that the Court determines the final total fee award subject to review by the Chief Judge of the Fourth Circuit Court of Appeals. If the requested fee is determined to be excessive, it will be reduced to an amount determined by the Court to be reasonable for the services rendered. In reaching this decision, the Court considers the importance of the case, the skill, professionalism and judgment used by counsel, the time and labor reasonably expended, the award of fees in similar cases, and the novelty of the case, if any. ***See Hensley v. Eckhart, 461 U.S. 424 (1983).*** As noted above, if counsel considers he has been "slapped in the face" by the fee awarded, he may seek review from the Fourth Circuit.

IT IS, THEREFORE, ORDERED that counsel advise this Court and the Federal Defenders Office by filing an appropriate pleading on or before

July 22, 2009, advising whether or not his accepts appointment as counsel for the Defendant herein.

Signed: July 17, 2009

A handwritten signature in dark ink, appearing to read 'L. H. Thornburg', is written over a horizontal line.

Lacy H. Thornburg
United States District Judge

